

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 53,)	
AFL-CIO,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 90-026
)	
CITY OF HIGGINSVILLE,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by International Brotherhood of Electrical Workers, Local 53, AFL-CIO, of a petition for certification as public employee representative for all transmission and distribution employees in the Electric Department of the City of Higginsville, Missouri, at which representatives of Local 53 and the City were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, who submitted the record to Board Members Pamela S. Wright, Employer Member and David L. Langston, Employee Member. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1986.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The City of Higginsville operates an electric department to serve the residents of the City. Department employees perform connects and disconnects, tree trimming, meter reading, and maintenance/repair functions. The City buys most of its power from

outside sources, namely Kansas City Power & Light. It does maintain a generating station which it utilizes to supply power during peak periods.

Seven employees (plus a maintenance person) presently work in the department: three journeyman linemen; two apprentice linemen; Ralph Franklin, and Gary Glover. All these employees work on a basic day-time shift, are paid on an hourly basis and punch a time clock. They all carry pagers and are on call to perform overtime and emergency work. A call-in list for overtime exists and rotates among department employees. A dispatcher at City Hall contacts the on-call employee directly for such call-in overtime.

In 1988, the then Superintendent of Utilities (Ellis) retired and the then City Administrator (Saxton) left, whereupon both positions were merged into one and later filled by David Blanchard. Although Blanchard's official job title is City Administrator/Utilities Superintendent, his employment contract with the City only mentions City Administrator. Blanchard had limited his involvement in the Electric Department to just policy determinations; the remaining responsibilities in that department have been delegated to the person running that department's day to day operations. Blanchard has no involvement in directing Electric Department employees, assigning or scheduling their work, handling emergency situations or evaluating department employees. After Ellis' retirement, Blanchard appointed Franklin (the Electric Plant Supervisor--labor grade 28) and Glover (the Electric Distribution Foreman--labor grade 26) as co-department heads. It was intended at that time that they would divide and share responsibilities for the department, with Franklin having authority for operating the generating plant and Glover overseeing the line crew. Each received a pay increase at that time. However, due to what Blanchard characterized as "turf problems" between them, Blanchard later appointed Franklin as the sole department head with the title Acting Electric Supervisor. As Acting Electric Supervisor, Franklin evaluated employees in the fall of 1989 and, as part of that evaluation process, withheld

an employee's pay increase due to poor work performance. He was also involved in a written reprimand of an employee, specifically discussing same with Blanchard who actually issued it. Franklin held the position of Acting Electric Supervisor until April 1990, when he stepped down due to health reasons. After Franklin stepped down, Blanchard appointed Glover to serve as Acting Electric Supervisor in addition to his existing position and title of Electric Distribution Foreman. Glover did not receive a pay increase for assuming this additional title.

As the Electric Distribution Foreman, Glover functions as a leadman who directs the line crew and oversees their work to ensure it is performed correctly. With 21 years seniority with the department, 11 more years than the next most senior employee, he is the department's most experienced lineman. Given this experience, he oftentimes handles field emergencies and difficult situations. He prepares work orders collected at City Hall, prioritizes the work and assigns it to department employees, giving himself the most complicated. He also schedules the work performed by department employees. In the field he performs the same work duties as other department employees, to wit: he drives a department truck, operates department equipment and works on jobs such as maintaining lines, tree trimming and servicing customers. He does not read meters or turn service on and off. Although he spends most of his time in the field, he does have an office at City Hall where he spends at least 15 minutes a day doing paperwork, namely ordering and checking supplies and looking over daily department bills. Afterwards, he takes these invoices to Franklin who records them. As the Electric Distribution Foreman he has not hired or fired anyone, evaluated employees or denied an employee a pay increase. He has issued a verbal reprimand and was involved (with Franklin) in the written reprimand of a department employee (which was issued by Blanchard). He schedules the line crew for time off (such as vacation) and signs compensatory leave slips; in addition, line employees contact him when they need to take sick leave. He also decides whether employees work overtime in order to complete

a particular job. He has temporarily transferred Electric Department employees to other departments that are short-handed.

After Glover was named Acting Electric Supervisor in April 1990, he continued to perform the above responsibilities in addition to the following: he now attends department head meetings and submits a monthly report to the City Council (via Blanchard) concerning the work performed by the department; he now signs travel and expense vouchers for employees in the department; he is now responsible for monitoring purchasing in the department (even though he has delegated some of this work to Franklin); he will evaluate department employees this fall as part of the department's yearly evaluation; and he now has the same power to discipline employees and deny merit increases as Franklin did when he held this position. Glover is presently the only acting department head in the City; all other departments are headed by individuals appointed permanently. Although Glover could remain the Acting Electric Supervisor for an indefinite period of time, the City was advertising for a permanent Electric Supervisor as of the time of the hearing herein.

There has not been a hiring in the Electric Department for several years. In those City departments where there have been hirings, the record indicates that the department head screened the applicants, conducted the interviews and made a recommendation to Blanchard who to hire; to date, Blanchard has followed every hiring recommendation made by a department head.

Department heads do not have the authority to discharge an employee. Discharges are handled by City ordinance which provides that a committee makes the final decision.

CONCLUSIONS OF LAW

International Brotherhood of Electrical Workers, Local 53 has petitioned to be certified as public employee representative of a bargaining unit comprised of all full-time and part-time transmission and distribution employees in the Electric Department of the

City of Higginsville. The City contends, contrary to the Union, that Gary Glover is a supervisory employee and therefore should be excluded from the proposed bargaining unit. The sole issue before the Board then is whether Glover is to be included in the proposed bargaining unit.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Although Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", we are satisfied that in the context of this case a unit of transmission and distribution employees in the City's Electric Department constitutes an appropriate bargaining unit.

The Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. See St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976) and Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W. 2d 581 (Mo.App. 1977). Here, the City contends that Glover is a supervisor so it is necessary to determine if such is, in fact, the case. In making this decision, we will look at the duties the individual performs, not just the job title. Similarly, although the individual who holds the position in question may believe they possess supervisory authority, our determination herein is based on the type of supervisory authority actually possessed.

Over the years, the Board has consistently considered the following factors in determining if a position is supervisory in nature:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.

- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The City contends that based on the above factors, Glover is a supervisor. The Union however, disputes this assertion and contends Glover does not meet the above criteria. In deciding whether this is in fact the case, we will apply the above factors to both positions Glover currently holds, namely the Electric Distribution Foreman and the Acting Electric Supervisor.

Electric Distribution Foreman

There is no question that the Electric Distribution Foreman directs the line crew, assigns them work and is in charge of their day to day activities. In addition, the occupant of this position (Glover) performs some administrative duties such as preparing work orders, prioritizing work, ordering and checking supplies and looking over daily departmental bills. Moreover, Glover has input into various supervisory functions, to wit: he has administered discipline in the form of an oral reprimand and was involved in the decision to issue a written reprimand as well as temporarily transferred employees into another department. In addition, he schedules the line crew for time off, signs compensatory leave slips and is contacted by line employees regarding sick leave. He also decides whether line employees work overtime.

Having said that though, we find that the Electric Distribution Foreman is a lead worker who does not possess supervisory duties in sufficient combination or degree to

be deemed a supervisor. Foremost in reaching this conclusion is that the Electric Distribution Foreman spends most of his time doing the same hands-on work as that performed by the line employees (except for not reading meters or turning service on and off). It follows then that he spends little of his time actually supervising them (i.e. the line employees). Given his active involvement in performing routine line duties (albeit the most difficult jobs), the Board concludes that any oversight function he performs is incidental to his supervising the line work activity. Thus, we are persuaded that the Electric Distribution Foreman primarily supervises the line work activity rather than the line workers themselves. The amount of independent judgment exercised by the Electric Distribution Foreman in directing the line employees is insufficient to ascribe him supervisory status. Accordingly, we hold that the Electric Distribution Foreman is not a supervisory employee.

This conclusion is buttressed by the fact that the status of the counterpart of the Electric Distribution Foreman, namely the Electric Plant Supervisor (currently occupied by Franklin) is not at issue herein. There appears to be great similarity in the duties and responsibilities of the two positions, with the Electric Distribution Foreman being the leadman or foreman for the outside work and the Electric Plant Supervisor being the leadman or foreman for the Generating Station. Given this similarity between the two positions, it would be illogical to hold that the Electric Distribution Foreman was a supervisor while the Electric Plant supervisor was not.

Acting Electric Supervisor

Having held that the position of Electric Distribution Foreman is not a supervisor, the question remains as to who, if anyone, is the supervisor of the Electric Department. Although at first glance it would appear to be Blanchard, given his title (namely City Administrator/Utilities Superintendent), a close look at the record reveals that he has limited his involvement in the Electric Department to just policy determinations and has delegated the remaining departmental responsibilities. Consequently, he is not involved

in the department's day to day operations. Moreover, he has no involvement in directing the Electric Department employees, assigning or scheduling their work, handling emergency situations or evaluating department employees. Given the foregoing, we are persuaded that Blanchard is not the Electric Department's supervisor because he does not have contact with Electric Department employees on a regular (daily) basis. Next, we find that Franklin, the Electric Plant Supervisor and former Acting Electric Supervisor is not the Electric Department's supervisor either because, as previously noted, his status in the proposed bargaining unit is not disputed. Obviously, someone in the bargaining unit cannot function as a supervisor. Finally, we believe it is extremely unlikely that the Electric Department employees have no supervisor; in our view someone has to be in charge and it is neither Blanchard nor Franklin.

We are convinced that the person in charge of the Electric Department is the Electric Supervisor. As the head of that department, the Electric Supervisor operates independently of Blanchard on a daily basis and exercises primary control over the employees in the department and their work. At present, Glover holds that position, albeit on an acting basis. Although Glover is presently classified by the City as the Acting Electric Supervisor (as opposed to the permanent Electric Supervisor), it is clear to us that he is functioning as the defacto department head. In this capacity he attends department head meetings, submits a monthly report to the City Council concerning the work performed by the department and signs travel/expense vouchers for department employees. The fact that Glover is not being paid at the Electric Supervisor rate, but rather at the Electric Distribution Foreman rate, does not change this result.

The record persuades the Board that the Electric Supervisor has the authority to effectively recommend several of the procedures listed in factor (1) above, namely hiring, promotion, transfer and discipline. First, with regard to hiring, it is initially noted that there has not been a hiring in the Electric Department for several years, so consequently there is no recent hiring experience to review. Nevertheless, in those City

departments where there have been hirings, the record indicates that the department head had significant input into the hiring process. Specifically, they screened the applicants, conducted the interviews and made a recommendation to Blanchard who to hire, which was followed. Normally we are hesitant to ascribe a job duty to an employee that they have not actually performed because of its speculative nature. Certainly such is the case here since Glover has no track record whatsoever in the hiring process. However, as we currently have no basis for doubting the Employer's assertion that the Electric Supervisor, like the other department heads, will have the same authority as the other City department heads in the hiring process, we are persuaded that the Electric Supervisor can effectively recommend the hiring of new employees. Next, with regard to promotions, it is noted that the Electric Supervisor is not empowered to promote per se. He does, though, perform yearly evaluations of departmental employees which are not questioned or changed by Blanchard. While Glover had not performed this duty as of the time of the hearing herein, his predecessor (Franklin) had. Thus, this duty is not at all speculative. Moreover, these evaluations can be used to deny pay increases as happened once when Franklin was Acting Electric Supervisor. Thus, the Electric Supervisor can affect promotions/pay increases by means of the yearly evaluation. Concerning transfers, it has already been noted that Glover, while acting as the Electric Distribution Foreman, has temporarily transferred employees into another department. Inasmuch as the Electric Supervisor position is higher in authority and in the organizational structure than the Electric Distribution Foreman position, we believe the Electric Supervisor has this authority also. The same rationale applies to discipline. It is clear from the record that Glover, while serving as Electric Distribution Foreman, has issued an oral reprimand and also discussed a written reprimand of an employee with Blanchard. That being so, we find that the Electric Supervisor likewise has this authority to discipline.

The above noted factors satisfy the Board that the Electric Supervisor exercises substantial supervisory authority over the employees the Electric Department, in contrast to the Electric Distribution Foreman who functions simply as a leadsman or working foreman. We therefore hold that the Electric Supervisor position is supervisory in nature.

In summary then, we find that Glover is not eligible to vote in the election ordered herein if he is still acting as the Electric Supervisor. However, in the event the City has hired another person as the Electric Supervisor by that time and Glover has returned to the Electric Distribution Foreman position, then he would be eligible to vote in the election.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit is as follows: all transmission and distribution employees in the Electric Department of the City of Higginsville, excluding office clerical employees, managerial employees, guards and supervisors.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be

represented for the purposes of exclusive recognition by International Brotherhood of Electrical Workers, Local 53.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to International Brotherhood of Electrical Workers, Local 53, within fourteen (14) days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 5th day of September, 1990.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant _____
Mary L. Gant, Chairman

/s/ Pamela S. Wright _____
Pamela S. Wright, Employer Member

/s/ David L. Langston _____
David L. Langston, Employee Member